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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

OSCAR LUNA, Plaintiff and Appellant, v. PIETRO DE SANTIS, Movant and Respondent.	F077679 (Super. Ct. No. 17CECG01454) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Kristi Culver Kapetan, Judge.

Oscar Luna, in pro. per., for Plaintiff and Appellant.

Chielpegian • Cobb and Mark E. Chielpegian for Movant and Respondent.

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Respondent Pierto De Santis brought a motion under Code of Civil Procedure section 473[1] to set aside a final judgment stating plaintiff Oscar Luna was "the sole owner in fee simple absolute of the real property described in the operative complaint." De Santis, the holder of recorded title to the real property, had not been named in Luna's

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[*] Before Franson, Acting P.J., Smith, J. and DeSantos, J.

[1] All unlabeled statutory references are to the Code of Civil Procedure.

complaint and had not been served with any pleadings. De Santis learned of the judgment only after receiving Luna's letter demanding he vacate and surrender the property. The superior court granted De Santis's motion, concluding the judgment was void because its entry violated De Santis's constitutional right to due process.

Luna appealed, contending the order should be reversed because (1) De Santis lacked standing to bring a motion to vacate the judgment; (2) the superior court erred in determining De Santis was an indispensable party; and (3) the superior court's order is void because De Santis's moving paper never raised his status as an indispensable party and Luna never had a chance to address the issue prior to the court's decision.

As explained below, we conclude the superior court did not commit legal or factual error when it determined (1) De Santis's claim he owned the real property was sufficient to provide him with standing; (2) his motion under section 473 was a procedurally appropriate way to challenge the judgment; and (3) De Santis's constitutional due process rights were violated by the entry of the judgment affecting his interest in the real property and, therefore, the judgment was void.

We therefore affirm the order setting aside the judgment.

FACTS

Plaintiff Oscar Luna filed this and other litigation to address the rightful ownership of certain personal and real property. The real property in question (1) is commonly known as 2131-2137 Amador Street, Fresno, California, (2) has been assigned Assessor's Parcel Number 466-131-16, and (3) has a legal description identifying it as Lots 9 and 10 in a fractional block of the City of Fresno (the Lots).

Luna alleges that in 1998 he made an agreement with Jean Michel Irigoyen. Part of its terms were Irigoyen's promise to purchase the Lots, pay their mortgages, and keep them in secret trust for Luna's benefit. Luna alleges the secret trust was to terminate at the earlier of (1) the property being paid in full, (2) Luna's death, or (3) Irigoyen's legal

incompetency or bankruptcy. He further alleges that on May 18, 2001, Irigoyen purchased the Lots in his and his former wife's name with Luna's approval.

Jean Michel Irigoyen died in September 2014. The probate of his estate was opened in Fresno County Superior Court under case No. 14CEPR01043.[2]

On October 1, 2014, Luna filed a lawsuit in Fresno County Superior Court, case No. 14CECG02921, against Irigoyen's estate (First Lawsuit). Among other things, Luna alleged Irigoyen held the Lots in private (i.e., secret) trust for Luna's benefit. Pursuant to an order to show cause, the superior court ordered the First Lawsuit dismissed without prejudice on April 28, 2016.[3]

Also on April 28, 2016, the court filed a judgment in the probate proceeding confirming the estate's ownership of property, which included the Lots and a 2003 Porsche 911 Turbo. The judgment was recorded the next day with the Fresno County Recorder. The judgment stated the Lots are "not subject to the lis pendens recorded by Oscar Luna at document number 2014.125214, which is hereby dissolved, null and void." The judgment directed the administrator of the estate to record the judgment so the Lots could be disposed of in accordance with the probate of the estate.

On July 27, 2016, the Fresno County Recorder recorded a grant deed transferring the Lots from "Laura Kuhne-Irigoyen, Administrator of the Estate of Jean Michel Irigoyen aka J.M. Irigoyen aka Jean Michael Irigoyen, deceased" to De Santis. De Santis claims this document makes him title holder of record.

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[2] The probate proceeding generated one writ petition (case No. F073802) and two appeals (case Nos. F073996 and F078194). The writ petition was summarily denied in May 2016. The first appeal resulted in an unpublished opinion dismissing the appeal because appellant Luna did not provide an adequate record to review the probate court's ruling. (*Laura Kuhne-Irigoyen v. Oscar Luna* (May 24, 2017, F073996) [nonpub. opn.].) In the second appeal, appellant Luna requested a dismissal in January 2019, which this court granted.

[3] The First Lawsuit generated one appeal (case No. F073104), which this court dismissed in February 2017 because it was taken from a nonappealable order.

On October 17, 2016, Luna filed a complaint to quiet title and cancel grant deed in Fresno County Superior Court, case No. 16CECG03317. He named as defendants (1) Fidelity National Title Company; (2) Laura Kuhne-Irigoyen, and (3) De Santis. The real property in question was the Lots. The deed Luna sought to cancel was the grant deed recorded on July 27, 2016, from Laura Kuhne-Irigoyen to De Santis. In January 2017, the superior court sustained Fidelity National Title Company's demurrer with leave to amend. Instead of amending, Luna filed a request for dismissal without prejudice.

PROCEEDINGS

The lawsuit that is the subject of this appeal began on May 1, 2017, when Luna filed a verified complaint for trust termination, conversion and injunctive relief. Luna named as defendants the Estate of Jean Michel Irigoyen; Calfed Law Corporation; Irigoyen Law Corporation; and Laura Kuhne-Irigoyen, personally and as administrator of her father's estate. DeSantis was not named as a defendant. The prayer for relief in the complaint requested (1) "an order declaring [Luna] the sole true and lawful owner of the trust properties described in this Complaint;" and (2) "an order requiring the surrender and delivery herewith of possession and title to all the trust properties described in this Complaint to [Luna]."

On September 7, 2017, Luna and Laura Kuhne-Irigoyen filed a two-page document titled "Settlement." The document stated, "Luna is, and shall be adjudged, the sole owner in fee simple absolute of the real property described in the complaint in [Case No. 14 CECG02921] and this action as 2131 and 2137 Amador, Fresno, California, A.P.N. 466-131-16." The document also stated Luna was the sole owner of a telephone number and a gray 2003 Porsche 911 Turbo and Laura Kuhne-Irigoyen was the sole owner of three other cars.

On September 25, 2017, a final judgment was entered implementing the "Settlement." The judgment stated, "Luna is adjudged the sole owner in fee simple absolute of the real property described in the operative complaint in this action as 2131

and 2137 Amador, Fresno, California, A.P.N. 466-131-16" and included a legal description of the Lots.

In March 2018, De Santis filed a motion to set aside the judgment. His notice of motion stated it was made pursuant to Code of Civil Procedure section 473. The motion asserted De Santis "was actual owner and record title holder to the [Lots]." De Santis stated he acquired title to the Lots on July 27, 2016, by way of a grant deed executed by Laura Kuhne-Irigoyen in her capacity as the administrator of the estate of Jean Michel Irigoyen. His declaration asserted he had no notice of the pendency of the present lawsuit until late October or early November 2017 when he received a letter from Luna claiming ownership of the Lots pursuant to the September 25, 2017, judgment. The letter also stated the judgment had been recorded in the Fresno County Recorder's Office on October 5, 2017.

On April 19, 2018, the trial court held a hearing on De Santis's motion to set aside the judgment. On April 23, 2018, the trial court filed a 13-page order after hearing that granted the motion to set aside the judgment on the ground "the judgment is void for failure to name De Santis as a party and serve him with the summons and complaint." The court ordered Luna to amend his complaint to add De Santis as a defendant and to serve De Santis with the amended complaint and summons within 15 days. The court "admonished [Luna] that failure to amend the complaint and serve De Santis *may* result in abatement or dismissal of the action for failure to join an indispensable party." (Italics added.)[4]

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[4] A careful reading of the order shows the superior court did not state De Santis *was* an indispensable person. Instead, its second to last paragraph simply admonishes (i.e., warns) Luna of what *might* happen if he fails to amend the complaint and serve De Santis. In short, the court did not render an actual, much less final, decision that De Santis was an "indispensable" person for purposes of section 389, California's compulsory joinder statute.

On May 4, 2018, Luna filed a notice of appeal from the order setting aside the judgment. This court assigned the appeal case No. F077542. In June 2018, Luna filed a form stating he abandoned the appeal, which caused this court to order its dismissal.

On June 25, 2018, Luna filed a second notice of appeal from the order setting aside the judgment, which this court assigned case No. F077679 and is the subject of this opinion. The notice of appeal stated an order granting a Code of Civil Procedure section 473 motion of a nonparty to set aside a final judgment is an appealable order, citing *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 628.

DISCUSSION

I. STANDING

A. General Principles

"'As a general principle, standing to invoke the judicial process requires an actual justiciable *controversy* as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. [Citations.] *To have standing, a party must be beneficially interested in the controversy*; that is, he or she must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." [Citation.] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.' [Citation.]" (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 599.)

Under these principles, De Santis has demonstrated that he has a special interest to be protected that is not held in common with the public at large. De Santis claims to own the Lots and holds recorded title to them. He presented a copy of a recorded grant deed to support his claim. Thus, the evidence before the superior court was sufficient to

conclude De Santis had the requisite interest to have standing in a lawsuit that sought to adjudicate of ownership of the Lots.

B. Section 473

Next, we consider whether De Santis had standing to bring a motion under section 473 to set aside the judgment. The superior court relied on subdivision (d) of section 473, which provides in full:

> "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

The superior court, in effect, made two determinations about De Santis's motion under section 473. First, a motion under section 473 was a procedurally appropriate method for challenging the judgment. Second, De Santis was a person who could bring a motion under section 473 (i.e., he had standing) to pursue his contention that the final judgment was void. We agree with both determinations.

First, in *Brown v. Williams* (2000) 78 Cal.App.4th 182, which the superior court cited, the Second District stated: "Section 473 empowers a trial court to set aside any judgment or order that is void as a matter of law." (*Id.* at p. 186, fn. 4.) To illustrate why a judgment might be void, the court stated "because the judgment or order violated a party's due process rights to notice and opportunity to be heard. (§ 473, subd. (d) ….)" (*Ibid.*) Thus, section 473 is an appropriate mechanism for asserting a judgment is void on due process grounds, provided the moving party has standing.

Second, as discussed earlier, De Santis has a sufficient interest in the Lots to have standing under general principles. Here, we consider the narrower question of whether he has standing to pursue a motion under section 473. As a person not named in Luna's pleadings or served with a summons and complaint, De Santis's situation is comparable to cases where the plaintiff and an insured defendant enter a stipulated judgment and the

insurance company has no notice of the claims being pursued against its insured. In those circumstances, an insurance company that has not refused to defend its insured and has no notice of the claims, may use a motion under section 473 to vacate the judgment, even though the insurance company was not a party to the lawsuit. (See generally, *Eigner v. Worthington* (1997) 57 Cal.App.4th 188, 196, fn. 5 ["insurer has standing to move to set aside a judgment which it might otherwise be required to satisfy"]; *Sunseri v. Camperos Del Valle Stables, Inc.* (1986) 185 Cal.App.3d 559.) Similarly, the fact De Santis was not a named defendant does not preclude him from having standing to pursue a motion under section 473 to protect the claim he owned the Lots. Thus, the superior court did not err in determining De Santis had standing to pursue the section 473 motion.

C. Section 1908

Luna's contention that De Santis had "no standing to challenge the stipulated judgment as a matter of law" is based on section 1908, subdivision (a)(2) and *King v. King* (1971) 22 Cal.App.3d 319. Luna's argument about standing is based on *when* De Santis acquired his interests in the Lots, not the insufficiency of his interests. We conclude Luna's timing-based argument is not relevant to the principles of standing, but goes to the merits of De Santis's claim that he was deprived of due process of law prior to the entry of the judgment. Accordingly, Luna's arguments are properly addressed in our analysis of the merits of the section 473 motion, not in the discussion of De Santis's standing to bring the motion.

II. MERITS OF De SANTIS'S DUE PROCESS CLAIM

A. Due Process Principles

Both the federal and state constitutions include a due process clause. Section 1 of the Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of … property, without due process of law …." Article I, section 7, subdivision (a) of the California Constitution states in relevant part: "A person may not

be deprived of … property without due process of law ….” These requirements for procedural due process impose constraints on governmental decisions that deprive individuals of interests that constitute “property.” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 332.)

“The essence of due process is simply notice and opportunity to be heard.” (*San Bernardino Community Hospital v. Workers’ Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936.) The opportunity to be heard must occur “‘at a meaningful time and in a meaningful manner.’” (*Mathews v. Eldridge*, *supra*, 424 U.S. at p. 333.)

B. Application of Principles

1. Notice

Luna’s timing-based arguments that refer to section 1908, subdivision (a)(2) and *King v. King, supra,* 22 Cal.App.3d 319 and when his *lis pendens* was filed appear to relate to the notice component of due process. In *King v. King*, the court describes the provision in section 1908 as providing “that one who acquires his interest in the subject of action subsequent to the commencement of the action with notice, actual or constructive, of the pendency of the action is bound by matters directly adjudged in the action notwithstanding he was not a party.” (*King v. King*, *supra*, at p. 328.) Luna asserts “De Santis acquired his interest in the [Lots] after this 2nd action was commenced” and, therefore, he was bound by the stipulated judgment in the First Lawsuit notwithstanding that De Santis was not a party to it.

Luna’s contention misstates the facts. The grant deed under which De Santis claims ownership of the Lots was recorded on July 27, 2016. The present action was commenced by the filing of a complaint on May 1, 2017. Therefore, De Santis did not acquire his interests in the Lots *after* this action was commenced. Therefore, he could not be bound by the judgment entered in this action. Because the terms of section 1908

do not apply to De Santis's situation, we conclude he could pursue a motion to vacate the judgment on the grounds it was void because it violated his rights to due process.

To the extent that Luna's arguments about notice is based on the *lis pendens* recorded in April 2016 as the result of an order in the First Lawsuit, the superior court rejected those arguments for a variety of reasons, concluding Luna's "argument that he did not need to name or serve De Santis in the present action because the lis pendens gave him adequate notice of [Luna's] property claim is without merit." The superior court found the *lis pendens* was no longer in effect when De Santis purchased the Lots in July 2016 because the court has expunged the *lis pendens*. On appeal, Luna has not attempted, much less shown, that this finding of historical fact lacks sufficient evidentiary support. Moreover, to the extent Luna argues this court should determine the *lis pendens* remained valid because it was improperly expunged, we reject that argument. This appeal is not a procedurally appropriate vehicle for challenging the decision to expunge the *lis pendens*. Luna has cited no authority that convinces us otherwise.

2. Meaningful Opportunity to be Heard

Based on our review of the record and the arguments presented by Luna in his appellate briefing, Luna has not shown De Santis had a meaningful opportunity to be heard before the September 25, 2017, judgment was entered. Indeed, Luna impliedly acknowledged that De Santis did not have an opportunity to appear *in the present action* to defend his ownership claims to the Lots when Luna argued below that he did not need to name or serve De Santis.

Based on the record, we conclude the superior court's implied finding that De Santis had not been given a meaningful opportunity to be heard prior to the entry of the final judgment is supported by inferences drawn from the fact that De Santis was not named as a defendant in this action and was not served with Luna's pleadings. Additional support for the implied finding is provided by De Santis's declaration in

support of his motion. In the declaration, De Santis asserts he had no notice of the present lawsuit during its pendency and he first heard of it in late October or early November 2017, when he received a letter from Luna asserting Luna was the sole owner in fee simple of the Lots. In sum, substantial evidence supports the finding that De Santis was not given a meaningful opportunity to be heard.

3. Conclusion

We conclude the superior court did not commit legal or factual error when it determined De Santis's procedural due process rights were violated by the entry of the judgment affecting his claims of ownership of the Lots because he was not given (1) notice or (2) a meaningful opportunity to be heard before the entry of the judgment. The superior court correctly concluded (1) a judgment that violates a party's due process rights of notice and opportunity to be heard is void and (2) a motion under section 473 is the appropriate procedural device for obtaining an order vacating the void judgment. (*Brown v. Williams, supra*, 78 Cal.App.4th at p. 186, fn. 4.)

Our discussion of (1) standing, (2) the use of a motion under section 473 to challenge the judgment, and (3) the merits of De Santis's due process claim provide a constitutionally sufficient explanation for upholding the superior court's order vacating the September 25, 2017, judgment. Under section 14 of article VI of the California Constitution, decisions of the courts of appeal "that determine causes shall be in writing with reasons stated." Under this constitutional directive, "[a]n appellate court is not required to address all of the parties' respective arguments, discuss every case or fact relied upon by the parties, distinguish an opinion just because a party claims it is apposite, or express every ground for rejecting every contention advanced by every party." (*People v. Garcia* (2002) 97 Cal.App.4th 847, 853, citing *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1263–1264.) Nonetheless, we will address Luna's other contentions and set forth grounds for rejecting them. (See generally, *Gamet v. Blanchard*

(2001) 91 Cal.App.4th 1276, 1284–1285 [although self-representing litigants must follow the same statutes and court rules as represented parties, courts nonetheless should exercise special care when dealing with self-representing litigants to make sure oral instructions and written notices are clear and understandable].)

C. Other Arguments

1. Indispensable Party

Heading II of Luna's appellant's opening brief asserts: "DISREGARDING LACK OF NOTICE THE TRIAL COURT ERRED IN ORDERING DE SANTIS NAMED AS INDISPENSABLE." Luna supports this contention by arguing section 1908 barred De Santis, who acquired an interest in the Lots *pendente lite* (i.e., while the action was pending), from ever becoming an indispensable party. We reject this argument for the reasons set forth in part II.B.1, *ante*.

2. Indispensable Party—A New Legal Theory

Heading III of Luna's appellant's opening brief contends: "THE TRIAL COURT'S WITHOUT-NOTICE INDISPENSABLE PARTY ORDER IS VOID." Luna states that De Santis's moving and reply papers made no reference to the concept of an indispensable party or De Santis's status as an indispensable party. Luna asserts both sides confined their arguments to issues raised by De Santis and did not address whether De Santis was an indispensable party.[5] In Luna's view, the superior court "converted De Santis's set aside motion to an indispensable party one" without giving him notice or an opportunity to be heard. Luna contends the failure to provide him notice and opportunity to be heard on the issue rendered the order void as a matter of law.

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[5] Section 389, the compulsory joinder statute, addresses the dismissal of a lawsuit without prejudice when the court determines (1) a necessary person cannot be made a party and (2) the absent, necessary person is "indispensable" based on the factors set forth in subdivision (b) of section 389.

Luna appears to have misinterpreted the superior court's order. The court did not use the factors set forth in subdivision (b) of section 389 to make a discretionary determination that De Santis qualified as an indispensable party, and then determine the judgment was void and must be set aside because De Santis was an indispensable party. As described earlier, the superior court analyzed De Santis's rights to due process and determined they were violated by the entry of the judgment. The court determined the denial of due process was "more than sufficient to support setting aside the judgment." Up to that point, and in the one-paragraph conclusion that followed, the superior court's order had not used the term "indispensable."

We interpret the order to mean that the superior court did not grant De Santis's motion to set aside based on the legal theory that he was "indispensable" under the compulsory joinder statute. The court's use of the term "indispensable" as a label at the end of its order was not significant because the label did not affect any substantive rights of Luna. Stated another way, Luna was given notice and opportunity to be heard on the due process theory De Santis raised in his motion and decided by the superior court. Accordingly, we reject Luna's contention that the superior court's order is void because it violated his due process rights. As a result, there is no need to remand this matter to the superior court for further proceedings in which Luna has an opportunity to explicitly address the concept of an indispensable person or party. (See §§ 43, 906 [appellate relief].)

3. Master of His Pleadings

In his appellant's reply brief, Luna contends De Santis has misled this court by describing the proceeding below as a quiet title action. Luna contends his complaint was for trust termination, conversion and injunctive relief and was not a quiet title action.

This court was not misled by De Santis's use of the term "quiet title action." We are aware of the description Luna gave the claims in his complaint and the prayer for

relief seeking "an order declaring [Luna] the sole true and lawful owner of the [Lots]." Our determination that the superior court did not err is based on our own analysis, which is in no way dependent upon the present lawsuit being labeled a quiet title action. We have looked at the substance of De Santis's claimed interests in the Lots, the substance of the due process violation asserted, and the substance of the judgment vacated by the superior court. (See generally, Civ. Code, § 3528 [form and substance].) The substance of a judgment stating Luna was "the sole owner in fee simple absolute of the [Lots]" directly impacts the ownership interests claimed by De Santis under the grant deed. Accordingly, we conclude De Santis's description of the present lawsuit as a quiet title action does not affect the conclusion that his due process rights were violated or the outcome of this appeal.

DISPOSITION

The order setting aside the September 25, 2017, judgment is affirmed. De Santis shall recover his costs on appeal.

Appellant's request for judicial notice, filed January 29, 2019, is granted.